*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.Nos.15574, 15575, 15576, 15577, 16364, 16365, 16366, 16419, 16420, 16421, 17105, 17136, 17137 and 17427 OF 2007

% 05-12-2007

 # W.P.No.15574 of 2007:

N. Venkatesh, S/o. N. Kistaiah,

…Petitioner

and

$ 1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

…Respondents

W.P.No.15575 of 2007:

Pittla Ram Dass, S/o. P. Sivaiah

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.15576 of 2007:

M. Thimothy, S/o. M. Subba Rao

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,

Vasavinagar, Secunderabad and another

… Respondents

W.P.No.15577 of 2007:

N. Narsing Rao, S/o. N. Pochaiah

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.16364 of 2007:

Smt. Gulla Lalitha, W/o. Gulla Suresh

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.16365 of 2007:

Smt. Gulla Lalitha, W/o. Gulla Suresh and another

…Petitioners

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.16366 of 2007:

M/s.Sree Sai Baba Builders, rep.by its Proprietor
Sri Gulla Suresh

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.16419 of 2007:

Gulla Ganesh, S/o. Late Sri Kuppuswamy Naidu

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.16420 of 2007:

Gulla Ganesh, S/o. Late Sri Kuppuswamy Naidu

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.16421 of 2007:

Gulla Ganesh, S/o. Late Sri Kuppuswamy Naidu

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.17105 of 2007:

G. Suresh, S/o. G. Kuppuswamy Naidu

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.17136 of 2007:

G. Suresh, S/o. G. Kuppu Swamy Naidu

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.17137 of 2007:

G. Suresh, S/o. G. Kuppu Swamy Naidu

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.17427 of 2007:

Smt. G. Lalitha, W/o. G. Suresh

…Petitioner

and

1. Bank of India, rep.by its Manager,

Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : Sri SRIKANTH KAVETI

^ Counsel for respondents : SMT. V. DYUMANI

?CASES REFERRED :

1 (2004)4 SCC 311
2 AIR 2007 SC 712
3 2007(1) D.R.T.C.592(Mad.)
4 2007(1) Decisions Today(SC) 419
5 AIR 2007 SC 712
6 AIR 2007 MADRAS 268
7 2007(1) D.R.T.C.592(Mad.)
8 AIR 2007 (NOC) 1634 (BOM)= 2007(3) AIR Bom.R.656(DB)

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NOs.15574, 15575, 15576, 15577, 16364, 16365, 16366, 16419, 16420, 16421, 17105, 17136, 17137 and 17427 OF 2007

DATED: 05-12-2007

BETWEEN:

W.P.No.15574 of 2007:

N. Venkatesh, S/o. N. Kistaiah,

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

…Respondents

W.P.No.15575 of 2007:

Pittla Ram Dass, S/o. P. Sivaiah

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.15576 of 2007:

M. Thimothy, S/o. M. Subba Rao

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.15577 of 2007:

N. Narsing Rao, S/o. N. Pochaiah

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.16364 of 2007:

Smt. Gulla Lalitha, W/o. Gulla Suresh

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.16365 of 2007:

Smt. Gulla Lalitha, W/o. Gulla Suresh and another

…Petitioners

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.16366 of 2007:

M/s.Sree Sai Baba Builders, rep.by its Proprietor
Sri Gulla Suresh

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.16419 of 2007:

Gulla Ganesh, S/o. Late Sri Kuppuswamy Naidu

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.16420 of 2007:

Gulla Ganesh, S/o. Late Sri Kuppuswamy Naidu

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.16421 of 2007:

Gulla Ganesh, S/o. Late Sri Kuppuswamy Naidu

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.17105 of 2007:

G. Suresh, S/o. G. Kuppuswamy Naidu

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,

Vasavinagar, Secunderabad and another

… Respondents

W.P.No.17136 of 2007:

G. Suresh, S/o. G. Kuppu Swamy Naidu

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.17137 of 2007:

G. Suresh, S/o. G. Kuppu Swamy Naidu

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

W.P.No.17427 of 2007:

Smt. G. Lalitha, W/o. G. Suresh

…Petitioner

and

1. Bank of India, rep.by its Manager,
Vasavinagar Branch, Plot No.28,
Shop.No.56 and 57, Laxmi Enclave,
Vasavinagar, Secunderabad and another

… Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NOs.15574, 15575, 15576, 15577, 16364, 16365, 16366, 16419, 16420, 16421, 17105, 17136, 17137 and 17427 OF 2007

COMMON ORDER:

Heard Sri Srikanth Kaveti, the counsel representing the writ petitioners and Smt. V.Dyumani, the counsel representing the respondents.

2. This batch of writ petitions are being disposed of by a common order though the parties are different in view of the fact that the principal question which had been argued in elaboration being common and in view of the fact that the factual matrix also appears to be substantially similar.

3. Sri Srikanth Kaveti, learned counsel representing the writ petitioners in all these writ petitions had taken this court to the respective pleadings of the parties and would maintain that in view of the fact that straight away the proceedings had been initiated under Sec.14 of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act' for the purpose of convenience) and would maintain that unless the procedure under Section 13(4) of the Act is followed prior to the initiation of the action under Section 14 of the Act, such proceedings are illegal and are liable to be quashed.

4. The learned counsel while making elaborate submissions had taken this Court through the different provisions of the Act and also the relevant rules governing under the Act and further would submit that substantial payments had been made though in certain of the matters, there are no interim orders and this would show the bonafides of the petitioners.

5. Per contra, Smt. Dyumani, learned counsel representing the respondents-banking institution had taken this Court through the specific stand taken in the counter affidavits and would maintain that the stand taken by the writ petitioners that an action under Sec.14 of the Act should be preceded by a notice under Section 13(4) of the Act cannot be a sustainable contention. The learned counsel had taken this Court through the relevant provisions of the Act and the rules and explained in elaboration the object of the Act and further placed strong reliance on several decisions to substantiate her contentions.

W.P.No.15574 of 2007:

6. This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the action of the respondents in threatening to take over the possession of the property bearing Flat No.F-1, 1st floor, bearing premises No.12-13-706 constructed on Plot No.121 in Sy.No.161 of Kimtee colony, Lalaguda, Tarnaka, Secunderabad without following the procedure laid down under Sec.13(3)(a) and

Sec.13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as illegal, arbitrary and consequently to set aside the notice dated 29-03-2007 published in Indian Express and for such other reliefs.

7. It is stated that the respondent-bank sanctioned housing an to the petitioner to a tune of Rs.7,00,000/- for the purpose of purchasing a residential flat bearing Flat No.F-1, 1st floor in premises bearing No. 12-13-706, Sy.No.161, Kimtee Colony, Tarnaka, Secunderabad, during the month of May, 2005. The term of the loan is 15 years payable @ Rs.7,011/- per month. It is further stated that as on the date of sanctioning the loan, the construction work of the said flat was going on and the respondents have informed to the petitioner that the payment of the loan installment will be commenced from the date of taking the possession of the residential flat and possession was delivered to him during the last week of November 2006 and from the month of December 2006, he has been regularly paying the loan installments of Rs.7,011/- per month without committing any default. Further it is stated that to the surprise and dismay of the petitioner, the first respondent got published a news item in the Indian Express on 29-03-2007 under Sec.13(2) of the SURFACI Act, 2002 demanding him to pay the entire loan amount within 60 days. Soon after coming to know of the said notice, he rushed to the first respondent branch and requested him to assign the reason for inclusion of his property in the list of defaulters. Then the first respondent informed to the petitioner

that he was in due of loan installments from November 2005 to November 2006, but in fact he was informed by the very same respondent that the payment of loan installments will commence from the date of taking over the possession of the premises and from the date of delivery of possession, he has been regularly paying the loan installments without any default till date. Accordingly, the petitioner submitted his written representation to the respondent reiterating the facts and requested him to drop all further proceedings. It is further stated that unfortunately the respondents without considering the petitioner's representation and without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, deputed their agents, who are coming to the petitioner's house day-in and day-out threatening him to vacate the premises, however, no notice or papers were served on him till date. Respondents have no right to take over the possession without complying with the Section 13(4) of the SURFACIA Act read with Rule 8 of the rules made there under and the action of the first respondent is illegal, arbitrary and contrary to the provisions of the SURFACIA Act, 2002. Further it is stated that except the above said residential flat, the petitioner did not have any other property and absolutely there is no fault on his part and he has also paid the loan installment for the current month, i.e. July 2007, which is evident from the statement of account given by the first respondent branch, if at all he has due of any amount, the first respondent ought to have informed him about the same, but without any protest the first

respondent has been receiving the loan installments and suddenly got issued the public notice dated 29-03-2007 stating that he was in due of the loan installments from November 2005 to November 2006. In spite of the petitioner submitted his reply to the said notice, the first respondent is sending his agents to his premises who are threatening him to pay the entire loan amount otherwise to vacate and handover the possession to them.

8. In the counter affidavit filed by the respondent-bank, it is stated that the writ petition is not maintainable. It is also further stated that the writ petitioner approached this court with tainted and unclean hands. He has suppressed the appointment of an advocate commissioner by the Chief Metroplitan Magistrate, Hyderabad under Sec.14 of the Act for taking possession of the secured asset and the said commissioner along with authorized officer of the bank visited the secured asset on 17-07-2007 for taking possession of the secured asset. The petitioner requested the advocate commissioner to grant time to vacate the premises. Suppressing the said material fact the petitioner fabricated a representation as if he has submitted to the respondent bank on 17-05-2007 in response to the demand notice published in Indian Express on 29-03-2007 under Sec.13(2) of the Act and filed the present writ petition alleging that the respondent-bank has not considered his representation dated 17-05-2007 and thereby the bank has violated the provisions of Sec.13(3)(a) of the Act. Further it is stated that the respondent has not received the alleged letter dated 17-

05-2007 referred in the writ petition. The said letter is fabricated by the petitioner, just before filing of the writ petition, with an intention to create a ground to approach the Hon'ble Court to file writ petition and to obtain exparte orders preventing the bank from proceeding further under the Act for enforcement of the secured asset. Further it is stated that at the entrance in the respondent bank a 'cheque drop box' is kept for the convenience of the customers, to drop their cheques meant for collection. For the purpose of crossing of cheques, a rubber stamp containing 'the name of the bank, name of the branch with pin code and phone numbers' is kept near the box to enable the customer to affix the said rubber stamp on the cheque. A notice is also displayed at the cheque drop box, the manner how the cheque is to be crossed and put into the cheque drop box. The customers are requested to affix the rubber stamp, in order to prevent frauds, thefts and unauthorized collection of the cheques by third parties by illegal methods. It is also stated that the petitioner taking advantage of the availability of the said rubber stamp at the entrance of the branch, had affixed the said stamp on the alleged letter dated 17-05-2007 with a malafide intention to give a colour, as if, he has submitted the letter/representation/objections to the respondent bank in response to the demand notice under Sec.13(2) of the Act published in the news paper. It is pertinent to note that the petitioner has not obtained any acknowledgment from the Manager having served the alleged letter. It is also stated that without prejudice to the rights and contentions of the

respondent bank in the writ petition, in order to keep the matter beyond controversy, the respondent bank has considered the objections raised by the petitioner in his alleged letter dated 17-05-2007 and sent a reply by registered post vide its letter dated 08-08-2007. Further it is stated that the petitioner approached the respondent bank for a term loan of Rs.7.00 lakhs for the purpose of purchase of Flat No.F1, First Floor, admeasuring 1000 sq. feet together with undivided share of land admeasuring 33 sq. yards out of 205 sq. yards bearing premises No.12-13-706, on Plot No.101, at Kimtee Colony, Lallaguda Village, Tarnaka, Secunderabad(secured asset). On the basis of the loan application, the respondent-bank sanctioned the said term loan against the security of the above said flat and the petitioner executed term loan agreement dated 03-05-2005 promising to repay the term loan in 15 years including 6 months moratorium. The petitioner also agreed to pay the term loan with interest at 2.25% below BPLR minimum of 8.50% with monthly rest. The equated monthly installment is Rs.7,011/-. The due date of payment of first equated monthly installment is 30-11-2005. The due date for payment of send equated monthly installment is 31-12-2005. The due date for payment of third equated monthly installment is 31-01-2006 and so on till the loan is fully repaid. The loan is repayable in 180 equated monthly installments. It is also stated that with the loan amount, the writ petitioner purchased the property referred above and obtained a sale deed dated

03-05-2005 from his vendors and the said sale deed was registered as document No.1142 of 2005 in the Sub Registrar Office, Maredpally. The petitioner deposited the said original sale deed with the respondent bank and created mortgage over the said property as security for due repayment of the term loan liability. Further it is stated that the allegations in the writ petition that the payment of loan installment will be commenced from the date of taking the possession of the flat and the flat was delivered in the last week of November 2006 is a deliberate false and misleading statement made with a malafide intention to obtain unlawful gain. It is evident from the contents in the registered sale deed dated

03-05-2005 that the vacant and physical possession of the secured asset was delivered to the petitioner on the date of the execution of the sale deed i.e. 03-05-2005. Therefore the allegations, that the bank authorities informed that the payment of loan installments would commence from the date of taking over possession of the property is a false and base less allegation. It is also not correct to state that Builder delivered possession of the property in the last week of November 2006 and the petitioner has been paying the installments regularly. As can be seen from the statement of account, the petitioner has committed default in payment of 14 installments as on the date of demand notice published in the news paper. As the petitioner failed to pay the installments on due date, the account was classified as Non-performing Asset existing norms and the respondent was constrained

to recall the entire loan. Further it is stated that the respondent bank sent the demand notice under Sec.13(2) of the Act to the address given in the loan application, but the said notices were returned unserved and as such respondent bank was constrained to publish the demand notice in the news paper. Even after expiry of 60 days from the date of publication of the demand notice, the petitioner has not chosen to pay the amount demanded in the notice. It is also stated that for taking physical possession of the secured asset, respondent bank filed Crl.M.P.No.3282 of 2007 before the Chief Metropolitan Magistrate, Hyderabad and the Chief Metropolitan Magistrate vide orders dated 13-07-2007 appointed an advocate commissioner for taking possession of the property and hand over the same to the authorized officer of the respondent bank. Further it is stated that the authorized officer and the commissioner appointed by the Chief Metropolitan Magistrate visited the secured asset on 17-07-2007 for taking possession of the same. The petitioner requested time to vacate the secured assets, but surprisingly filed the above writ petition with all false allegations. To invoke the jurisdiction of this Court, the petitioner has gone to an extent to fabricate a letter dated 17-05-2007 and filed the same along with the writ petition as if he had submitted the said letter to the respondent bank and the bank has not considered the objections raised by him in the said letter to the notice issued by the bank under Sec.13(2) of the Act. It is also stated that the petitioner came to this court with unclean hands, with fabricated documents

suppressing the appointment of the advocate commissioner by the Chief Metropolitan Magistrate for taking possession of the secured assets. Further specific stand has been taken that since the representation has been considered and a reply has been given, the writ petition itself became infructuous. In the light of the same, it is prayed that the writ petition is liable to be dismissed. It is also stated that the petitioner is having an effective and alternative remedy under Sec.17 of the Act. Hence the dismissal of the writ petition had been prayed for.

W.P.No.15575 of 2007:

9. This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the action of the respondents in threatening to take over the possession of the property bearing Flat No.S-1, 2nd floor, bearing premises No.12-13-706 constructed on Plot No.121 in Sy.No.161 of Kimtee colony, Lalaguda, Tarnaka, Secunderabad without following the procedure laid down under Sec.13(3)(a) and Sec.13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as illegal, arbitrary and consequently to set aside the notice dated 29-03-2007 published in Indian Express and for such other reliefs.

10. It is stated that the respondent-bank sanctioned housing loan to the petitioner to a tune of Rs.7,00,000/- for the purpose of purchasing a residential flat bearing Flat No.S-1, 2nd floor in premises bearing No. 12-13-706, Sy.No.161, Kimtee Colony, Tarnaka, Secunderabad,

during the month of May, 2005. The term of the loan is 15 years payable @ Rs.7,011/- per month. It is further stated that as on the date of sanctioning the loan, the construction work of the said flat was going on and the respondents have informed to the petitioner that the payment of the loan installment will be commenced from the date of taking the possession of the residential flat and possession was delivered to him during the last week of November 2006 and from the month of December 2006, he has been regularly paying the loan installments of Rs.7,011/- per month without committing any default. Further it is stated that to the surprise and dismay of the petitioner, the first respondent got published a news item in the Indian Express on 29-03-2007 under Sec.13(2) of the SURFACI Act, 2002 demanding him to pay the entire loan amount within 60 days. Soon after coming to know of the said notice, he rushed to the first respondent branch and requested him to assign the reason for inclusion of his property in the list of defaulters. Then the first respondent informed to the petitioner that he was in due of loan installments from November 2005 to November 2006, but in fact he was informed by the very same respondent that the payment of loan installments will commence from the date of taking over the possession of the premises and from the date of delivery of possession, he has been regularly paying the loan installments without any default till date. Accordingly, the petitioner submitted his written representation to the respondent reiterating the facts and requested him to drop all further proceedings. It is further

stated that unfortunately the respondents without considering the petitioner's representation and without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, deputed their agents, who are coming to the petitioner's house day-in and day-out threatening him to vacate the premises, however, no notice or papers were served on him till date. Respondents have no right to take over the possession without complying with the Section 13(4) of the SURFACIA Act read with Rule 8 of the rules made there under and the action of the first respondent is illegal, arbitrary and contrary to the provisions of the SURFACIA Act, 2002. Further it is stated that except the above said residential flat, the petitioner did not have any other property and absolutely there is no fault on his part and he has also paid the loan installment for the current month, i.e. July 2007, which is evident from the statement of account given by the first respondent branch, if at all he has due of any amount, the first respondent ought to have informed him about the same, but without any protest the first respondent has been receiving the loan installments and suddenly got issued the public notice dated 29-03-2007 stating that he was in due of the loan installments from November 2005 to November 2006. In spite of the petitioner submitted his reply to the said notice, the first respondent is sending his agents to his premises who are threatening him to pay the entire loan amount otherwise to vacate and handover the possession to them.

W.P.No.15576 of 2007:

11. This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the action of the respondents in threatening to take over the possession of the property bearing Flat No.F-2, 1st floor, bearing premises No.12-13-706 constructed on Plot No.121 in Sy.No.161 of Kimtee colony, Lalaguda, Tarnaka, Secunderabad without following the procedure laid down under Sec.13(3)(a) and Sec.13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as illegal, arbitrary and consequently to set aside the notice dated 29-03-2007 published in Indian Express and for such other reliefs.

12. It is averred that the respondent-bank sanctioned housing loan to the petitioner to a tune of Rs.7,00,000/- for the purpose of purchasing a residential flat bearing Flat No.F-2, 1st floor in premises bearing No. 12-13-706, Sy.No.161, Kimtee Colony, Tarnaka, Secunderabad, during the month of May, 2005. The term of the loan is 15 years payable @ Rs.7,011/- per month. It is further stated that as on the date of sanctioning the loan, the construction work of the said flat was going on and the respondents have informed to the petitioner that the payment of the loan installment will be commenced from the date of taking the possession of the residential flat and possession was delivered to him during the last week of November 2006 and from the month of December 2006, he has been regularly paying the loan installments of Rs.7,011/- per month without committing any default. Further it is stated that to the surprise and dismay of the petitioner, the

first respondent got published a news item in the Indian Express on 29-03-2007 under Sec.13(2) of the SURFACI Act, 2002 demanding him to pay the entire loan amount within 60 days. Soon after coming to know of the said notice, he rushed to the first respondent branch and requested him to assign the reason for inclusion of his property in the list of defaulters. Then the first respondent informed to the petitioner that he was in due of loan installments from November 2005 to November 2006, but in fact he was informed by the very same respondent that the payment of loan installments will commence from the date of taking over the possession of the premises and from the date of delivery of possession, he has been regularly paying the loan installments without any default till date. Accordingly, the petitioner submitted his written representation to the respondent reiterating the facts and requested him to drop all further proceedings. It is further stated that unfortunately the respondents without considering the petitioner's representation and without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, deputed their agents, who are coming to the petitioner's house day-in and day-out threatening him to vacate the premises, however, no notice or papers were served on him till date. Respondents have no right to take over the possession without complying with the Section 13(4) of the SURFACIA Act read with Rule 8 of the rules made there under and the action of the first respondent is illegal, arbitrary and contrary to the provisions of the SURFACIA Act, 2002. Further it is stated that except

the above said residential flat, the petitioner did not have any other property and absolutely there is no fault on his part and he has also paid the loan installment for the current month, i.e. July 2007, which is evident from the statement of account given by the first respondent branch, if at all he has due of any amount, the first respondent ought to have informed him about the same, but without any protest the first respondent has been receiving the loan installments and suddenly got issued the public notice dated 29-03-2007 stating that he was in due of the loan installments from November 2005 to November 2006. In spite of the petitioner submitted his reply to the said notice, the first respondent is sending his agents to his premises who are threatening him to pay the entire loan amount otherwise to vacate and handover the possession to them.

W.P.No.15577 of 2007:

13. This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the action of the respondents in threatening to take over the possession of the property bearing Flat No.S-2, 2nd floor, bearing premises No.12-13-706 constructed on Plot No.121 in Sy.No.161 of Kimtee colony, Lalaguda, Tarnaka, Secunderabad without following the procedure laid down under Sec.13(3)(a) and Sec.13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as illegal, arbitrary and consequently to set aside the notice dated 29-03-2007 published in

Indian Express and for such other reliefs.

14. It is stated that the respondent-bank sanctioned housing loan to the petitioner to a tune of Rs.6,00,000/- for the purpose of purchasing a residential flat bearing Flat No.S-2, 2nd floor in premises bearing No. 12-13-706, Sy.No.161, Kimtee Colony, Tarnaka, Secunderabad, during the month of May, 2005. The term of the loan is 15 years payable @ Rs.6,012/- per month. It is further stated that as on the date of sanctioning the loan, the construction work of the said flat was going on and the respondents have informed to the petitioner that the payment of the loan installment will be commenced from the date of taking the possession of the residential flat and possession was delivered to him during the last week of November 2006 and from the month of December 2006, he has been regularly paying the loan installments of Rs.6,012/- per month without committing any default. Further it is stated that to the surprise and dismay of the petitioner, the first respondent got published a news item in the Indian Express on 29-03-2007 under Sec.13(2) of the SURFACI Act, 2002 demanding him to pay the entire loan amount within 60 days. Soon after coming to know of the said notice, he rushed to the first respondent branch and requested him to assign the reason for inclusion of his property in the list of defaulters. Then the first respondent informed to the petitioner that he was in due of loan installments from November 2005 to November 2006, but in fact he was informed by the very same respondent that the payment of loan installments will commence from

the date of taking over the possession of the premises and from the date of delivery of possession, he has been regularly paying the loan installments without any default till date. Accordingly, the petitioner submitted his written representation to the respondent reiterating the facts and requested him to drop all further proceedings. It is further stated that unfortunately the respondents without considering the petitioner's representation and without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, deputed their agents, who are coming to the petitioner's house day-in and day-out threatening him to vacate the premises, however, no notice or papers were served on him till date. Respondents have no right to take over the possession without complying with the Section 13(4) of the SURFACIA Act read with Rule 8 of the rules made there under and the action of the first respondent is illegal, arbitrary and contrary to the provisions of the SURFACIA Act, 2002. Further it is stated that except the above said residential flat, the petitioner did not have any other property and absolutely there is no fault on his part and he has also paid the loan installment for the current month, i.e. July 2007, which is evident from the statement of account given by the first respondent branch, if at all he has due of any amount, the first respondent ought to have informed him about the same, but without any protest the first respondent has been receiving the loan installments and suddenly got issued the public notice dated 29-03-2007 stating that he was in due of the loan installments from November 2005 to November 2006. In spite

of the petitioner submitted his reply to the said notice, the first respondent is sending his agents to his premises who are threatening him to pay the entire loan amount otherwise to vacate and handover the possession to them.

W.P.No.16364 of 2007:

15. This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the impugned notice dated 08-01-2007 issued under Sec.13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 as illegal and arbitrary and consequently to set aside the same by directing the respondents not to take any coercive steps and for such other reliefs.

16. It is submitted that the petitioner availed a loan facility on 25-08-2004 a sum of Rs.6,00,000/- and on 31-08-2004 a sum of Rs.3,00,000/- repayable with interest @ 11.5% per annum and the property was mortgaged, which is situated at Plot No.18 part, Shantideep Housing Colony, Kakaguda, Secunderabad. Further it is stated that the petitioner is stood as guarantor to the above mentioned mortgaged property for availing over draft facility. The petitioner has donated the said land to a temple and petitioner got constructed a four storied building on the land admeasuring 464 sq.yards available with him. The ground floor of the premises consists of Shiridi Sai Baba Temple, which is constructed in the year 2006-07. The first floor consists of a museum showing the life history, teachings and studio setting of Shiridi village, which is first of its kind in the country, i.e. of

Sri Shiridi Sai Baba a great saint who lived in Shiridi. The second and third floor consists of big halls, which meant for Bhajanas, meditation, prayers and annadanam. It is further stated that the temple is functioning with two priests and Abhishekam and timely Aarati and Archanas were performed and on an average around 600 devotees worship in the temple. The temple has employed six employees and a Manager to look after the affairs of the temple and that it is purely the temple purpose and not a commercial purpose. It is further stated that the temple is constructed without any donations and it is anon profit activity and that the petitioner out of his devotion for the great saint had constructed the said premises for the devotees and till date he has not accepted a single donation for the same. Further it is stated that after the petitioner has donated the land, allocated the same for the temple and started the construction with his own funds. After the ground floor is laid, the construction of the temple could not proceed further due to want of funds. In the circumstances, the petitioner availed a business loan in the name of his construction company and proceeded with the noble work. After the mortgage loan was granted by the bank, the petitioner diverted the funds for the construction of temple and desired to repay the loan from the profits made out of his business. However, in the year 2004-05 there was heavy downfall in the real estate business and the petitioner suffered heavy financial losses in his business and hence he could not repay the outstanding amount in time and he had made several requests to the bank to reschedule the over

draft and provide him time for payment. It is further stated that till date the petitioner had paid a sum of Rs.1,70,000/- and the installment due as on 04-05-2007 is Rs.2,07,000/- against the O.D. account as per the statement issued by the respondent bank and the monthly installment due and payable is Rs.14,510/-. Further it is stated that in view of the above circumstances the first respondent got issued a notice under Sec.13(2) of SURFACI Act, 2002 on 08-01-2007 giving the petitioner 60 days time to clear the liability. The respondent had declared the said O.D. account as non performing and that the petitioner has given a detailed representation on 18-01-2007 and the first respondent acknowledged the receipt of the said letter on 18-01-2007 and failed to give a reply as contemplated under Sec.13(3)(a) of the SURFACIA Act, 2002. Unfortunately without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, the first respondent deputed their agents to the petitioner's temple informing that the first respondent has approached the concerned authority of the court under Sec.14 of SURFACIA Act, 2002 and the possession will be taken over by them any time. However, no notice or papers were served on the petitioner till date. The first respondent did not have any right to take over the possession without complying to the Sec.13(4) of SURFACIA Act 2002 read with Rule-8 of SURFACIA Rule, 2000. It is further submitted that the action of the officials of the respondent bank are visiting the temple premises every day for payment of loan and threatening the temple authorities that they will lock the premises and

take over the physical possession of the mortgaged property situated at plot No.18 part, Santideep Housing Colony, Kakaguda, Secunderabad and stop all activities in case if the loan amount is not cleared immediately without complying with the provisions of Sec.13(3) and Sec.14 of SURFACIA Act, 2002 read with Rule-8 of SURFACIA Rule-2002 is illegal and contrary to the provisions of the said Act. The entire value of the temple including the land and structures are around Rs.1.25 crores. Hence, the present writ petition.

W.P.No.16365 of 2007:

17. This writ petition is filed by the petitioners seeking a writ of Mandamus declaring the impugned notice dated 08-01-2007 issued under Sec.13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 as illegal and arbitrary and consequently to set aside the same by directing the respondents not to take any coercive steps and for such other reliefs.

18. It is averred that the petitioners availed a loan facility on 11-09-2004 a sum of Rs.8,70,000/- repayable with interest @ 11.5% per annum and the property was mortgaged, which is situated at Plot No.19 part, Shantideep Housing Colony, Kakaguda, Secunderabad. Further it is stated that the petitioner is stood as guarantor to the above mentioned mortgaged property for availing mortgage loan facility. The petitioner has donated the said land to a temple and petitioner got constructed a four storied building on the land admeasuring 464 sq.yards available with him. The ground floor of the premises consists

of Shiridi Sai Baba Temple, which is constructed in the year 2006-07. The first floor consists of a museum showing the life history, teachings and studio setting of Shiridi village, which is first of its kind in the country, i.e. of Sri Shiridi Sai Baba a great saint who lived in Shiridi. The second and third floor consists of big halls, which meant for Bhajanas, meditation, prayers and annadanam. It is further stated that the temple is functioning with two priests and Abhishekam and timely Aarati and Archanas were performed and on an average around 600 devotees worship in the temple. The temple has employed six employees and a Manager to look after the affairs of the temple and that it is purely the temple purpose and not a commercial purpose. It is further stated that the temple is constructed without any donations and it is anon profit activity and that the petitioner out of his devotion for the great saint had constructed the said premises for the devotees and till date he has not accepted a single donation for the same. Further it is stated that after the petitioner has donated the land, allocated the same for the temple and started the construction with his own funds. After the ground floor is laid, the construction of the temple could not proceed further due to want of funds. In the circumstances, the petitioner availed a business loan in the name of his construction company and proceeded with the noble work. After the mortgage loan was granted by the bank, the petitioner diverted the funds for the construction of temple and desired to repay the loan from the profits made out of his business. However, in the year 2004-05 there was

heavy downfall in the real estate business and the petitioner suffered heavy financial losses in his business and hence he could not repay the outstanding amount in time and he had made several requests to the bank to reschedule the over draft and provide him time for payment. It is further stated that till date the petitioner had paid a sum of Rs.1,48,000/- and the installment due as on 04-05-2007 is Rs.2,07,000/- against the O.D. account as per the statement issued by the respondent bank and the monthly installment due and payable is Rs.14,100/-. Further it is stated that in view of the above circumstances the first respondent got issued a notice under Sec.13(2) of SURFACI Act, 2002 on

08-01-2007 giving the petitioner 60 days time to clear the liability. The respondent had declared the said O.D. account as non performing and that the petitioner has given a detailed representation on 18-01-2007 and the first respondent acknowledged the receipt of the said letter on 18-01-2007 and failed to give a reply as contemplated under Sec.13(3)(a) of the SURFACIA Act, 2002. Unfortunately without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, the first respondent deputed their agents to the petitioner's temple informing that the first respondent has approached the concerned authority of the court under Sec.14 of SURFACIA Act, 2002 and the possession will be taken over by them any time. However, no notice or papers were served on the petitioner till date. The first respondent did not have any right to take over the possession without complying to the Sec.13(4) of

SURFACIA Act 2002 read with Rule-8 of SURFACIA Rule, 2000. It is further submitted that the action of the officials of the respondent bank are visiting the temple premises every day for payment of loan and threatening the temple authorities that they will lock the premises and take over the physical possession of the mortgaged property situated at plot No.19 part, Santideep Housing Colony, Kakaguda, Secunderabad and stop all activities in case if the loan amount is not cleared immediately without complying with the provisions of Sec.13(3) and Sec.14 of SURFACIA Act, 2002 read with Rule-8 of SURFACIA Rule-2002 is illegal and contrary to the provisions of the said Act. The entire value of the temple including the land and structures are around Rs.1.25 crores. Hence, the present writ petition.

W.P.No.16366 of 2007:

19. This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the impugned notice dated 08-01-2007 issued under Sec.13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 as illegal and arbitrary and consequently to set aside the same by directing the respondents not to take any coercive steps and for such other reliefs.

20. It is stated that the petitioner availed a over draft loan facility on 26-02-2005 initially Rs.10,00,000/- repayable with interest @ 11.5% per annum, and the O.D. limit was subsequently increased to Rs.14,00,000/- and the property was mortgaged, which is situated at Plot No.18 part, Shantideep Housing Colony, Kakaguda,

Secunderabad. Further it is stated that the petitioner is stood as guarantor to the above mentioned mortgaged property for availing over draft facility. The petitioner has donated the said land to a temple and petitioner got constructed a four storied building on the land admeasuring 464 sq.yards available with him. The ground floor of the premises consists of Shiridi Sai Baba Temple, which is constructed in the year 2006-07. The first floor consists of a museum showing the life history, teachings and studio setting of Shiridi village, which is first of its kind in the country, i.e. of Sri Shiridi Sai Baba a great saint who lived in Shiridi. The second and third floor consists of big halls, which meant for Bhajanas, meditation, prayers and annadanam. It is further stated that the temple is functioning with two priests and Abhishekam and timely Aarati and Archanas were performed and on an average around 600 devotees worship in the temple. The temple has employed six employees and a Manager to look after the affairs of the temple and that it is purely the temple purpose and not a commercial purpose. It is further stated that the temple is constructed without any donations and it is anon profit activity and that the petitioner out of his devotion for the great saint had constructed the said premises for the devotees and till date he has not accepted a single donation for the same. Further it is stated that after the petitioner has donated the land, allocated the same for the temple and started construction with his own funds. After the ground floor is laid, the construction of the temple could not proceed further due to want of funds. In the circumstances,

the petitioner availed a business loan in the name of his construction company and proceeded with the noble work. After the O.D. limits were granted by the bank, the petitioner diverted the funds for the construction of temple and desired to repay the loan from the profits made out of his business. However, in the year 2004-05 there was heavy downfall in the real estate business and the petitioner suffered heavy financial losses in his business and hence he could not repay the outstanding amount in time and he had made several requests to the bank to reschedule the over draft and provide him time for payment. It is further stated that till date the petitioner had paid a sum of Rs.4,92,500/- and the installment due as on 04-05-2007 is Rs.2,19,000/- by the respondent bank. Further it is stated that in view of the above circumstances the first respondent got issued a notice under Sec.13(2) of SURFACIA Act, 2002 on 08-01-2007 giving the petitioner 60 days time to clear the liability. The respondent had declared the said O.D. account as non performing and that the petitioner has given a detailed representation on 18-01-2007 and the first respondent acknowledged the receipt of the said letter on 18-01-2007 and failed to give a reply as contemplated under Sec.13(3)(a) of the SURFACIA Act, 2002. Unfortunately without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, the first respondent deputed their agents to the petitioner's temple informing that the first respondent has approached the concerned authority of the court under Sec.14 of SURFACIA Act, 2002 and the possession will

be taken over by them any time. However, no notice or papers were served on the petitioner till date. The first respondent did not have any right to take over the possession without complying to the Sec.13(4) of SURFACIA Act 2002 read with Rule-8 of SURFACIA Rules, 2000. It is further submitted that the action of the officials of the respondent bank are visiting the temple premises every day for payment of loan and threatening the temple authorities that they will lock the premises and take over the physical possession of the mortgaged property situated at plot No.18 part, Santideep Housing Colony, Kakaguda, Secunderabad and stop all activities in case if the loan amount is not cleared immediately without complying with the provisions of Sec.13(3) and Sec.14 of SURFACIA Act, 2002 read with Rule-8 of SURFACIA Rule-2002 is illegal and contrary to the provisions of the said Act. The entire value of the temple including the land and structures are around Rs.1.25 crores. Hence, the present writ petition.

W.P.No.16419 of 2007:

21. This writ petition is filed by the petitioner seeking a direction by way of Mandamus declaring the action of the respondents in threatening to take over the possession of the property bearing Flat No.404, 3rd floor in Sai Baba Enclave, Kakaguda, Secunderabad, without following the procedure laid down under Sec.13(3)(a) and Sec.13(4) of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as illegal and arbitrary and consequently to set aside the notice dated 08-01-2007 and to

grant such other reliefs.

22. It is submitted that the respondent bank sanctioned housing loan to a tune of Rs.6,90,000/- for the purpose of purchasing a residential flat bearing Flat No.404, 3rd floor in Sai Baba Enclave, Kakaguda, Secunderabad on 23-12-2004 in favour of one Sri B.Venkateswarlu and the term of the loan is 5 years payable @ Rs.13,000/- per month and the petitioner herein stood as guarantor for the said loan amount. It is further stated that subsequent to the sanction of the said loan, the principal borrower has been regularly paying the loan installments and as on today he had paid an amount of Rs.1,10,000/- and due to some business problems some amount has become outstanding and this fact was brought to the notice of the respondent bank and requested them to grant some time so as to enable the petitioner to pay the entire arrears of loan instalments of Rs.1,45,760/- and the respondents have informed him to pay the same as soon as possible. Further it is stated that to the surprise and dismay of the petitioner, the first respondent got issued a notice under Sec.13(2) of the SURFACT Act, 2002 on 08-01-2007 demanding him to pay the entire loan amount within 60 days by duly declaring his loan account as Non-Performing Asset. Soon after coming to know of the said notice, petitioner rushed to the first respondent branch and requested him to assign the reason for issuance of the impugned notice contrary to the promise made by them and further demanded him to pay the total loan amount, though the term of loan is still

subsisting. Accordingly, the petitioner submitted a written representation to the respondent reiterating the facts and requested him to drop all further proceedings on 18-01-2007. Further it is stated that unfortunately the respondents without considering the representation of the petitioner and without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, deputed their agents who are coming to the petitioner's premises and threatening him to vacate the same. The respondents did not have any right to take over the possession without complying with the Sec.13(4) of the Act read with Rule 8 of rules made under the Act. The action of the first respondent is illegal, arbitrary and contrary to the provisions of the Act. It is further stated that except the above said residential flat the principal borrower did not have any other property and the petitioner had already paid the loan installments of Rs.1,10,000/ as on today and requested the respondents to grant some time for paying the arrears of loan installments and the respondents on one hand granted time and on the other hand declared the loan as NPA and issued the impugned notice demanding him to pay the entire loan amount in lumpsum. In spite of submitting his reply to the said notice, the first respondent is sending his agents to the petitioner's premises who are threatening him to pay the entire loan amount otherwise to vacate and handover the possession to them. Hence, the petitioner approached this court by way of this writ petition.

W.P.No.16420 of 2007:

23. This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the action of the respondents in threatening to take over the possession of the property bearing Flat No.1, Ground Floor, Sree Sai Plaza, Vijay Nagar Colony, Picket, Secunderabad, without following the procedure laid down under Sec.13(3)(a) and Sec.13(4) of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as illegal and arbitrary and consequently to set aside the notice dated 08-01-2007 and for such other reliefs.

24. It is averred that the respondent bank sanctioned housing loan to a tune of Rs.8,40,000/- for the purpose of purchasing a residential flat bearing Flat No.1, Ground Floor, Sree Sai Plaza, Vijay Nagar Colony, Picket, Secunderabad on 29-12-2004 in favour of one Sri P. Ramesh and the term of the loan is 5 years payable @ Rs.15,500/- per month and the petitioner herein stood as guarantor for the said loan amount. It is further stated that subsequent to the sanction of the said loan, the principal borrower has been regularly paying the loan installments and as on today he had paid an amount of Rs.1,39,600/- and due to some business problems some amount has become outstanding and this fact was brought to the notice of the respondent bank and requested them to grant some time so as to enable the petitioner to pay the entire arrears of loan installments of Rs.2,15,750/- and the respondents have informed him to pay the same as soon as possible. Further it is stated that to the surprise and dismay of the

petitioner, the first respondent got issued a notice under Sec.13(2) of the SURFACT Act, 2002 on 08-01-2007 demanding him to pay the entire loan amount within 60 days by duly declaring his loan account as Non-Performing Asset. Soon after coming to know of the said notice, petitioner rushed to the first respondent branch and requested him to assign the reason for issuance of the impugned notice contrary to the promise made by them and further demanded him to pay the total loan amount, though the term of loan is still subsisting. Accordingly, the petitioner submitted a written representation to the respondent reiterating the facts and requested him to drop all further proceedings on

18-01-2007. Further it is stated that unfortunately the respondents without considering the representation of the petitioner and without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, deputed their agents who are coming to the petitioner's premises and threatening him to vacate the same. The respondents did not have any right to take over the possession without complying with the Sec.13(4) of the Act read with Rule 8 of rules made under the Act. The action of the first respondent is illegal, arbitrary and contrary to the provisions of the Act. It is further stated that except the above said residential flat the principal borrower did not have any other property and the petitioner had already paid the loan installments of Rs.1,39,600/ as on today and requested the respondents to grant some time for paying the arrears of loan installments and the

respondents on one hand granted time and on the other hand declared the loan as NPA and issued the impugned notice demanding him to pay the entire loan amount in lumpsum. In spite of submitting his reply to the said notice, the first respondent is sending his agents to the petitioner's premises who are threatening him to pay the entire loan amount otherwise to vacate and handover the possession to them. Hence, the petitioner approached this court by way of this writ petition.

W.P.No.16421 of 2007:

25. This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the action of the respondents in threatening to take over the possession of the property bearing Flat No.3, 4th Floor, Sree Sai Plaza, Vijay Nagar Colony, Picket, Secunderabad, without following the procedure laid down under Sec.13(3)(a) and Sec.13(4) of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as illegal and arbitrary and consequently to set aside the notice dated 08-01-2007 and for such other reliefs.

26. It is submitted that the respondent bank sanctioned housing loan to a tune of Rs.7,90,000/- for the purpose of purchasing a residential flat bearing Flat No.1, Ground Floor, Sree Sai Plaza, Vijay Nagar Colony, Picket, Secunderabad on 29-03-2005 in favour of one Sri P. Ramesh and the term of the loan is 5 years payable @ Rs.8,060/- per month and the petitioner herein stood as guarantor for the said loan amount. It is further stated that subsequent to the

sanction of the said loan, the principal borrower has been regularly paying the loan installments and as on today he had paid an amount of Rs.82,000/- and due to some business problems some amount has become outstanding and this fact was brought to the notice of the respondent bank and requested them to grant some time so as to enable the petitioner to pay the entire arrears of loan installments of Rs.71,000/- and the respondents have informed him to pay the same as soon as possible. Further it is stated that to the surprise and dismay of the petitioner, the first respondent got issued a notice under Sec.13(2) of the SURFACT Act, 2002 on 08-01-2007 demanding him to pay the entire loan amount within 60 days by duly declaring his loan account as Non-Performing Asset. Soon after coming to know of the said notice, petitioner rushed to the first respondent branch and requested him to assign the reason for issuance of the impugned notice contrary to the promise made by them and further demanded him to pay the total loan amount, though the term of loan is still subsisting. Accordingly, the petitioner submitted a written representation to the respondent reiterating the facts and requested him to drop all further proceedings on

18-01-2007. Further it is stated that unfortunately the respondents without considering the representation of the petitioner and without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, deputed their agents who are coming to the petitioner's premises and threatening him to vacate the same. The

respondents did not have any right to take over the possession without complying with the Sec.13(4) of the Act read with Rule 8 of rules made under the Act. The action of the first respondent is illegal, arbitrary and contrary to the provisions of the Act. It is further stated that except the above said residential flat the principal borrower did not have any other property and the petitioner had already paid the loan installments of Rs.71,000/ as on today and requested the respondents to grant some time for paying the arrears of loan installments and the respondents on one hand granted time and on the other hand declared the loan as NPA and issued the impugned notice demanding him to pay the entire loan amount in lumpsum. In spite of submitting his reply to the said notice, the first respondent is sending his agents to the petitioner's premises who are threatening him to pay the entire loan amount otherwise to vacate and handover the possession to them. Hence, the petitioner approached this court by way of this writ petition.

W.P.No.17105 of 2007:

27. This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the action of the respondents in threatening to take over the possession of the property bearing Flat No.F-2, D-Block, Sri Sai Baba Enclave, Kakaguda, Secunderabad, without following the procedure laid down under Sec.13(3)(a) and Sec.13(4) of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as illegal and arbitrary and consequently to set aside the notice dated 08-01-2007 and for such other reliefs.

28. It is submitted that the respondent bank sanctioned housing loan to a tune of Rs.7,38,000/- for the purpose of purchasing a residential flat bearing Flat No.F-2, D-Block, Sri Sai Baba Enclave, Kakaguda, Secunderabad in favour of Sri M. Babji and M. Sita Rajya Laxmi and the petitioner herein stood as guarantor for the said loan amount. It is further stated that subsequent to the sanction of the said loan, the principal borrowers have been regularly paying the loan installments and as on today they had paid an amount of Rs.1,19,236/- and due to some business problems some amount has become outstanding and this fact was brought to the notice of the respondent bank and requested them to grant some time so as to enable the petitioner to pay the entire arrears of loan installments of Rs.1,53,764/- and the respondents have informed him to pay the same as soon as possible. Further it is stated that to the surprise and dismay of the petitioner, the first respondent got issued a notice under Sec.13(2) of the SURFACT Act, 2002 on 08-01-2007 demanding him to pay the entire loan amount within 60 days by duly declaring his loan account as Non-Performing Asset. Soon after coming to know of the said notice, petitioner rushed to the first respondent branch and requested him to assign the reason for issuance of the impugned notice contrary to the promise made by them and further demanded him to pay the total loan amount, though the term of loan is still subsisting. Accordingly, the petitioner submitted a written representation to the respondent reiterating the facts and requested him to drop all further

proceedings on

18-01-2007. Further it is stated that unfortunately the respondents without considering the representation of the petitioner and without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, deputed their agents who are coming to the petitioner's premises and threatening him to vacate the same. The respondents did not have any right to take over the possession without complying with the Sec.13(4) of the Act read with Rule 8 of rules made under the Act. The action of the first respondent is illegal, arbitrary and contrary to the provisions of the Act. It is further stated that except the above said residential flat the principal borrowers did not have any other property and the petitioner had already paid the loan installments of Rs.1,19,236/ as on today and requested the respondents to grant some time for paying the arrears of loan installments and the respondents on one hand granted time and on the other hand declared the loan as NPA and issued the impugned notice demanding him to pay the entire loan amount in lumpsum. In spite of submitting his reply to the said notice, the first respondent is sending his agents to the petitioner's premises who are threatening him to pay the entire loan amount otherwise to vacate and handover the possession to them. Hence, the petitioner approached this court by way of this writ petition.

W.P.No.17136 of 2007:

29. This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the action of the respondents in threatening to

take over the possession of the property bearing Flat No.2, 2nd Floor, Sri Sai Plaza, Vijay Nagar Colony, Picket, Secunderabad, without following the procedure laid down under Sec.13(3)(a) and Sec.13(4) of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as illegal and arbitrary and consequently to set aside the notice dated 08-01-2007 and for such other reliefs.

30. It is stated that the respondent bank sanctioned housing loan to a tune of Rs.6,30,000/- for the purpose of purchasing a residential flat bearing Flat No.2, 2nd Floor, Sree Sai Plaza, Vijay Nagar Colony, Picket, Secunderabad on 13-05-2005 in favour of one Sri K. Tulasidas and the petitioner herein stood as guarantor for the said loan amount. It is further stated that subsequent to the sanction of the said loan, the principal borrower has been regularly paying the loan installments and as on today he had paid an amount of Rs.1,65,097/- and due to some business problems some amount has become outstanding and this fact was brought to the notice of the respondent bank and requested them to grant some time so as to enable the petitioner to pay the entire arrears of loan installments of Rs.58,303/- and the respondents have informed him to pay the same as soon as possible. Further it is stated that to the surprise and dismay of the petitioner, the first respondent got issued a notice under Sec.13(2) of the SURFACIA Act, 2002 on 08-01-2007 demanding him to pay the entire loan amount within 60 days by duly declaring his loan account as Non-Performing Asset on 30-06-

2006. Soon after coming to know of the said notice, petitioner rushed to the first respondent branch and requested him to assign the reason for issuance of the impugned notice contrary to the promise made by them and further demanded him to pay the total loan amount, though the term of loan is still subsisting. Accordingly, the petitioner submitted a written representation to the respondent reiterating the facts and requested him to drop all further proceedings on 18-01-2007. Further it is stated that unfortunately the respondents without considering the representation of the petitioner issued possession notice under Sec.13(4) of SURFACIA Act on 23-06-2007. The action of the first respondent is illegal, arbitrary and contrary to the provisions of the Act. It is further stated that except the above said residential flat the principal borrower did not have any other property and the petitioner had already paid the loan installments of Rs.82,000/ as on today and requested the respondents to grant some time for paying the arrears of loan installments and the respondents on one hand granted time and on the other hand declared the loan as NPA and issued the impugned notice demanding him to pay the entire loan amount in lumpsum. In spite of submitting his reply to the said notice, the first respondent is sending his agents to the petitioner's premises who are threatening him to pay the entire loan amount otherwise to vacate and handover the possession to them. Hence, the petitioner approached this court by way of this writ petition.

W.P.No.17137 of 2007:

31. This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the action of the respondents in threatening to take over the possession of the property bearing Flat No.T-2, 3rd Floor, Sri Sai Baba Enclave, D-Block, Kakaguda, Secunderabad, without following the procedure laid down under Sec.13(3)(a) and Sec.13(4) of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as illegal and arbitrary and consequently to set aside the notice dated 08-01-2007 and for such other reliefs.

32. It is submitted that the respondent bank sanctioned housing loan to a tune of Rs.7,14,000/- on 17-11-2004 and 02-12-2004 respectively for the purpose of purchasing a residential flat bearing Flat No.T-2, 3rd Floor, D-Block, Sri Sai Baba Enclave, Kakaguda, Secunderabad in favour of Sri J.S.Prakash and J.S.Sai Kumar and the petitioner herein stood as guarantor for the said loan amount. It is further stated that subsequent to the sanction of the said loan, the principal borrowers have been regularly paying the loan installments and as on today they had paid an amount of Rs.1,07,400/- and due to some business problems some amount has become outstanding and this fact was brought to the notice of the respondent bank and requested them to grant some time so as to enable the petitioner to pay the entire arrears of loan installments of Rs.1,68,600/- and the respondents have informed him to pay the same as soon as possible. Further it is stated that to the surprise and dismay of the petitioner, the

first respondent got issued a notice under Sec.13(2) of the SURFACIA Act, 2002 on 08-01-2007 demanding him to pay the entire loan amount within 60 days by duly declaring his loan account as Non-Performing Asset on 30-06-2006. Soon after coming to know of the said notice, petitioner rushed to the first respondent branch and requested him to assign the reason for issuance of the impugned notice contrary to the promise made by them and further demanded him to pay the total loan amount, though the term of loan is still subsisting. Accordingly, the petitioner submitted a written representation to the respondent reiterating the facts and requested him to drop all further proceedings on 18-01-2007. Further it is stated that unfortunately the respondents without considering the representation of the petitioner and without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, deputed their agents who are coming to the petitioner's premises and threatening him to vacate the same. The respondents did not have any right to take over the possession without complying with the Sec.13(4) of the Act read with Rule 8 of rules made under the Act. The action of the first respondent is illegal, arbitrary and contrary to the provisions of the Act. It is further stated that except the above said residential flat the principal borrowers did not have any other property and the petitioner had already paid the loan installments of Rs.1,07,400/- as on today and requested the respondents to grant some time for paying the arrears of loan installments and the respondents on one hand granted time and on the other hand declared

the loan as NPA and issued the impugned notice demanding him to pay the entire loan amount in lumpsum. In spite of submitting his reply to the said notice, the first respondent is sending his agents to the petitioner's premises who are threatening him to pay the entire loan amount otherwise to vacate and handover the possession to them. Hence, the petitioner approached this court by way of this writ petition.

W.P.No.17427 of 2007:

33. This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the action of the respondents in threatening to take over the possession of the property bearing Flat No.002, Ground Floor, Sri Sai Baba Ashirvad Sadan, Mandabada Basthi, Lothkunta, Secunderabad, without following the procedure laid down under Sec.13(3)(a) and Sec.13(4) of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as illegal and arbitrary and consequently to set aside the notice dated 08-01-2007 and for such other reliefs.

34. It is averred that the respondent bank sanctioned housing loan to a tune of Rs.14,00,000/- for the purpose of purchasing a residential flat bearing Flat No. 002, Ground Floor, Sri Sai Baba Ashirvad Sadan, Mandabada Basthi, Lothkunta, Secunderabad in favour of Sri G. Gopal and the petitioner herein stood as guarantor for the said loan amount. It is further stated that subsequent to the sanction of the said loan, the principal borrower has been regularly paying the loan installments and as on today he had paid an amount of Rs.1,98,000/- and due to some

business problems some amount has become outstanding and this fact was brought to the notice of the respondent bank and requested them to grant some time so as to enable the petitioner to pay the entire arrears of loan installments of Rs.2,59,800/- and the respondents have informed him to pay the same as soon as possible. Further it is stated that to the surprise and dismay of the petitioner, the first respondent got issued a notice under Sec.13(2) of the SURFACIA Act, 2002 on 08-01-2007 demanding him to pay the entire loan amount within 60 days by duly declaring his loan account as Non-Performing Asset. Soon after coming to know of the said notice, petitioner rushed to the first respondent branch and requested him to assign the reason for issuance of the impugned notice contrary to the promise made by them and further demanded him to pay the total loan amount, though the term of loan is still subsisting. Accordingly, the petitioner submitted a written representation to the respondent reiterating the facts and requested him to drop all further proceedings on

18-01-2007. Further it is stated that unfortunately the respondents without considering the representation of the petitioner and without complying with the provisions under Sec.13(3)(a) to Sec.30 of SURFACIA Act, deputed their agents who are coming to the petitioner's premises and threatening him to vacate the same. The respondents did not have any right to take over the possession without complying with the Sec.13(4) of the Act read with Rule 8 of rules made under the Act. The action of the first respondent is illegal, arbitrary and

contrary to the provisions of the Act. It is further stated that except the above said residential flat the principal borrowers did not have any other property and the petitioner had already paid the loan installments of Rs.1,98,000/- as on today and requested the respondents to grant some time for paying the arrears of loan installments and the respondents on one hand granted time and on the other hand declared the loan as NPA and issued the impugned notice demanding him to pay the entire loan amount in lumpsum. In spite of submitting his reply to the said notice, the first respondent is sending his agents to the petitioner's premises who are threatening him to pay the entire loan amount otherwise to vacate and handover the possession to them. Hence, the petitioner approached this court by way of this writ petition.

35. In view of the fact that the averments in the counter affidavits filed being the same in all these writ petitions and in view of the fact that the details had been narrated in writ petition No.15574 of 2007, the stand taken by the banking institution need not be repeated again.

36. It is no doubt brought to the notice of this Court that there is an alternative remedy by way of appeal under Sec.17 of the Act, further it is also brought to the notice of this Court that substantial amounts had been paid by the respective writ petitioners, it appears that in certain writ petitions where interim orders are not there even in such cases, substantial amounts had been paid by the respective writ petitioners. Several of the facts in this batch of writ petitions are not in serious controversy. The principal question which had been argued in

elaboration is that inasmuch as the further action is being preceded with by the banking institution under Sec.14 of the Act without complying with Sec.13(4) of the Act and such action of the banking institution is illegal and hence the proceedings are liable to be quashed.

37. Section 14 of the Act reads as hereunder:

> "Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of the secured asset:
>
> (1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him…
>
> a) take possession of such asset and documents relating thereto; and
>
> b) forward such asset and documents to the secured creditor.
>
> (2) For the purpose of securing compliance with the provisions of sub section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.
>
> (3) No act of the Chief Metropolitan Magistrate or

the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

38. Section 13 of the Act deals with enforcement of security interest. Section 13(4) of the Act reads as hereunder:

"In case the borrower fails to discharge his liability in full within the period specified in sub section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset.

(b) Take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt].

Provided further that where the management of whole, of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;]

(c) appoint any person (hereafter referred to as the manager) to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due

to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt."

39. Rule 8 of the Security Interest (Enforcement) Rules, 2002 dealing with sale of immovable secured assets, reads as hereunder:

"(1) Where the secured asset is an immovable property, the authorized officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published in two leading newspaper one in vernacular language having sufficient circulation in the locality, by the authorized officer.

(3) In the event of possession of immovable property is actually taken by the authorized officer such property shall be kept in his own custody or in the custody of any person authorized or appointed by him, who shall take as much care of the property in his custody as a owner of the ordinary prudence would under the similar circumstances take of such property.

(4) The authorized officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed off.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the

reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

(a) By obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or

(b) By inviting tenders from the public; or

(c) By holding public auction, or

(d) By private treaty

(6) The authorized officer shall serve to the borrower a notice of thirty days for sale of the movable secured assets under sub-rule (5)

Provided that if the sale of such secured assets is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading news papers, one in vernacular language having sufficient circulation in that locality by setting out the terms of sale, which may include:-

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor

(b) the secured debt for recovery of which the property is to be sold

(c) reserve price, below which the property may not be sold

(d) time and place of public auction or the time after which sale by any other mode shall be completed

(e) depositing earnest money as may be stipulated by the secured creditor

(f) any other thing which the authorized officer considers it material for a purchaser to know in order to judge the nature and value of the movable secured assets

(7) Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorized officer deems if fit, put on the web-site of the secured creditor on the Interest.

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the parties in writing."

Reliance was placed on the judgment of the division Bench in Writ Appeal No.734 of 2007 and batch dated 13-09-2007, these writ appeals were directed against the orders made by the learned Single Judge where under the interim order of Status Quo had been confirmed. The Division Bench while dismissing the writ appeals observed that

"The judgments of the Supreme Court and Madras High Court on which reliance has been placed by the learned counsel for the appellants, do not have any bearing on the adjudication of legality and correctness of the orders under challenge. In ***M/S. MERDIA CHEMICALS v. UNION OF INDIA***[1] the Supreme Court considered challenge to the vires of some of the provisions of the Act and substantially negatived the same. In ***M/S. TRANSCORE v. UNION OF INDIA***[2] the Supreme Court considered the inter relationship between the Act and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and held that the secured creditors can resort to both the enactments for recovery of their dues. In ***SUNDARAM HOME FINANCE LTD. v. TEHSILDAR, HOSUR***[3] the Division Bench of the Madras High Court

held that once objection filed under Section 13(3) is overruled, there is no impediment in taking action under Sections 13(4) and 14 of the Act. In none of these cases, the Supreme Court and Madras High Court considered the legality and justification of interim order passed by the learned Single Judge in the proceedings initiated by the Bank and/or other secured creditor under Sections 13 and 14 of the Act.

In the result, the appeals are dismissed. However, liberty is given to the appellants to make a request to the concerned Bench on 22-10-2007 for out of turn hearing of the writ petitions. We hope and trust that such request would receive sympathetical consideration.

As a sequel of dismissal of the writ appeals, W.A.M.P.Nos.1473 to 1478 of 2007 filed by the appellants for interim relief are also dismissed."

40. Reliance also was placed on ***GREATER BOMBAY CO-OP. BANK LTD. v. M/S.UNITED YARN TEX PVT.LTD.***[4], on ***M/S. TRANSCORE v. UNION OF INDIA & ANOTHER***[5] wherein it was observed at paras 54, 55, 56 and 58

"the word possession is a relative concept. It is not an absolute concept. The dichotomy between symbolic and physical possession does not find place in the Act. As stated above, there is a conceptual distinction between securities by which the creditor obtains ownership of or interest in the property mortgaged and securities where the creditor obtains neither an interest in nor possession of the property but the property is appropriated to the satisfaction of the debt(charges). Basically, the NPA Act deals with the former type of securities under which the secured creditor,

namely, the bank/FI obtains interest in the property concerned. It is for this reason that the NPA Act ousts the intervention of the courts/tribunals.

Keeping the above conceptual aspect in mind, we find that Section 13(4) of the NPA Act proceeds on the basis that the borrower, who is under a liability, has failed to discharge his liability within the period prescribed under Section 13(2), which enables the secured creditor to take recourse to one of the measures, namely, taking possession of the secured assets including the right to transfer by way of lease, assignment or sale for realizing the secured assets. Section 13(4-A) refers to the word "possession" simpliciter. There is no dichotomy in sub-section (4-A) as pleaded on behalf of the borrowers. Under Rule 8 of the 2002 Rules, the authorized officer is empowered to take possession by delivering the possession notice prepared as nearly as possible in Appendix IV to the 2002 Rules. That notice is required to be affixed on the property. Rule 8 deals with sale of immovable secured assets. Appendix IV prescribes the form of possession notice. It *inter alia* states that notice is given to the borrower who has failed to repay the amount informing him and the public that the bank/FI has taken possession of the property under Section 13(4) read with Rule 9 of the 2002 Rules. Rule 9 relates to time of scale, issue of sale certificate and delivery of possession. Rule 9(6) states that on confirmation of sale, if the terms of payment are complied with, the authorized officer shall issue a sale certificate in favour of the purchaser in the form given in Appendix V to the 2002 Rules. Rule 9(9) states that the authorized officer shall deliver the property to the buyer free from all encumbrances known to the

secured creditor or not known to the secured creditor.(emphasis supplied). Section 14 of the NPA Act states that where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred, the secured creditor may, for the purpose of taking possession, request in writing to the District Magistrate to take possession thereof. Section 17(1) of NPA Act refers to right of appeal. Section 17(3) states that if the DRT as an appellate authority after examining the facts and circumstances of the case comes to the conclusion that any of the measures under Section 13(4) taken by the secured creditor are not in accordance with the provisions of the Act, it may by order declare that the recourse taken to any one or more measures is invalid, and consequently, restore possession to the borrower and can also restore management of the business of the borrower. Therefore, the scheme of Section 13(4) read with Section 17(3) shows that if the borrower is dispossessed, nor in accordance with the provisions of the Act, then the DRT is entitled to put the clock back by restoring the status quo ante. Therefore, it cannot be said that if possession is taken before confirmation of sale, the rights of the borrower to get the dispute adjudicated upon is defeated by the authorized officer taking possession. As stated above, the NPA Act provides for recovery of possession by non-adjudicatory process, therefore, to say that the rights of the borrower would be defeated without adjudication would be erroneous. Rule 8, undoubtedly, refers to sale of immovable secured asset. However, Rule 8(4) indicates that where possession is taken by the authorized officer before issuance of sale certificate under Rule 9, the

authorized officer shall take steps for preservation and protection of secured assets till they are sold or otherwise disposed of. Under Section 13(8), if the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the creditor before the date fixed for sale or transfer, the asset shall not be sold or transferred. The costs, charges and expenses referred to in Section 13(8) will include costs, charges and expenses which the authorized officer incurs for preserving and protecting the secured assets till they are sold or disposed of in terms of Rule 8(4). Thus, Rule 8 deals with the stage anterior to the issuance of sale certificate and delivery of possession under Rule 9. Till the time of issuance of sale certificate, the authorized officer is like a court receiver under Order XL Rule 1 CPC. The court receiver can take symbolic possession and in appropriate cases where the court receiver finds that a third party interest is likely to be created overnight, he can take actual possession even prior to the decree. The authorized officer under Rule 8 has greater powers than even a court receiver as security interest in the property is already created in favour of the banks/FIs. That interest needs to be protected. Therefore, Rule 8 provides that till issuance of the sale certificate under Rule 9, the authorized officer shall take such steps as he deems fit to preserve the secured asset. It is well settled that third party interests are created overnight and in very many cases those third parties take up the defence of being a bona fide purchaser for value without notice. It is these types of disputes which are sought to be avoided by Rule 8 read with Rule 9 of the 2002 Rules. In the circumstances, the drawing of dichotomy between symbolic and actual possession does

not find place in the scheme of the NPA Act read with the 2002 Rules.

Whether ad valorem court fee prescribed under Rule 7 of the DRT(Procedure) Rules, 1993 is payable on an application under Section 17(1) of the NPA Act in the absence of any rule framed under the NPA Act.

Mr. N.C.Sahni supplemented by Mr.Pankaj Gupta, learned advocates appearing on behalf of the borrower submitted that by virtue of the amending Act 30 of 2004 with effect from 11-11-2004, the persons aggrieved against the action of the bank or FI initiated under Section 13(4) of the NPA Act have a right to adjudication by way of an application to the DRT under Section 17(1) of the NPA ACT. It is submitted that in exercise of powers conferred under Section 40(1) of the NPA Act, the Central Government has issued an Order called the "Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2004("Order 2004") making the provision for levying of fees for filing of appeals. This Order 2004 was issued on 06-04-2004. It is further pointed out that on 08-04-2004, this Court delivered its judgment in the case of Mardia Chemicals (supra), Clause(3) of the Order 2004 provides that the fee for filing of an appeal to DRT under Section 17(1) of the NPA Act shall be mutalis mutandis as provided for filing of an application to DRT under Section 19 of the DRT Act read with Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993("1993 Rules"). Learned advocates urged that after the amending Act 30 of 2004 which came into force with effect from 11-11-2004 by which amendment was made to Section 17(1) of NPA Act, the Order 2004 dated 06-04-2004 issued by the Central

Government has become redundant because the amending provision stipulates filing of an application by the borrower under Section 17(1) of NPA Act to the DRT challenging the action under Section 13(4) by filing an application along with payment of fees as may be prescribed. Learned advocates submitted that under Section 17(1) of NPA Act, as amended, a proviso is added which states that different fees may be prescribed for making an application by the borrower. It is further submitted that the word "prescribed" has been defined under Section 2(s) to mean prescribed by rules made under the NPA Act. It is urged that in the judgment of Mardia Chemicals(supra), this Court held that the remedy under Section 17 of NPA Act is not an appellate remedy. Clause (3) of the Order 2004 providing for fees for filing an appeal under the unamended provisions cannot, therefore, be made applicable to any application filed after 11-11-2004. Learned advocates submitted that NPA Act vide Section 17(1) of NPA Act read with Rule 7 of the 1993 Rules under DRT Act cannot form the basis to claim ad valorem court fee in terms of Rule 7 of the 1993 Rules, particularly after 11-11-2004 because, as stated above, this Court has held in Mardia Chemicals(Supra) that the remedy under Section 17(1) of NPA Act is the original remedy and not an appellate remedy. It is further submitted that after 11-11-2004, fees could be levied only vide Rules and not by an Order removing Difficulties.

It is true that Section 17(1) of the NPA Act states *inter alia* that a borrower aggrieved by action taken under Section 13(4) may make an application along with fees, as may be prescribed to the DRT having jurisdiction in the matter. It is true that, the marginal note states that Section

17(1) is a right to appeal. In our view, the marginal note to Section 17(1) cannot control the text and the content of Section 17(1) which, as stated above, states that the borrower aggrieved by any of the measures in Section 13(4) may make an application to the DRT. The judgment of this Court in Mardia Chemicals(supra) states that the DRT acts in an Original Jurisdiction under Section 17 of the NPA Act. In our opinion, as far as the levy of fee is concerned, the terminology makes no difference. In fact, the proviso to Section 17(1) indicates that different fees may be prescribed for making an application by the borrower. The reason is obvious. Certain measures taken under Section 13(4) like taking over the management of the fee vis-à-vis the secured creditor taking possession of financial assets have to bear different fees. Each measure is required to be separately charged to the borrower(applicant) for which different fees could be prescribed. The said proviso indicates that the tribunal under Section 17(1) exercises Original Jurisdiction and, therefore, as far as the fees are concerned, the terminology of original or appellate jurisdiction in the context of fees is irrelevant. Secondly, under the Order 2004 issued by the Central Government under Section 40 of the NPA Act, it is provided that the fee for filing an appeal to the DRT under Section 17(1) of NPA Act shall be mutates mutandis as provided for filing an application to the DRT under Rule 7 of the 1993 Rules. The word mutates mutandis indicates that a measure is adopted for assessing the fees required to be paid by the borrower when he applies by way of application to the DRT under Section 17(1) of NPA Act challenging the action taken under Section 13(4) of NPA Act by the secured creditor. Lastly, we do not find any merit in the

argument advanced on behalf of the borrowers that since fees have not been prescribed by the rules after 11-11-2004, fees cannot be levied on the basis of the Order 2004 which was more prior to 11-11-2004. The contention of the borrowers is that since Section 17(1) of NPA Act, as amended, provides for prescribing fees for an application under Section 17(1) and since no rule has been framed under the NPA Act after 11-11-2004 fees cannot be levied under the Order 2004 dated 06-04-2004 which, according to the borrower, has come to an end after 11-11-2004 with the enactment of the amending Act 30 of 2004."

41. Further strong reliance was placed on the decision of the Division Bench of the Madras High Court in ***MISONS LEATHER LTD. v. CANARA BANK, REP. BY ITS CHIEF MANAGER***[6] wherein at paras 9, 10 and 11 it was observed that

"Relying on the above observations, it is contended that by virtue of amendment, the scope of Section 17 of the Act is restricted as to the compliance of the provisions of the Act alone and various other grounds such as demand of amount has been recovered and failure to follow the mandatory guidelines of Reserve Bank of India and offer of one time settlement, calculation of interest and nature of secured creditors and all the incidental questions cannot be gone into by the Debt Recovery Tribunal.

We are afraid that the contention is totally misconceived. The provisions of Section 17(1) of the Act provides remedy for the borrower/guarantor/mortgagor to challenge the action of the Bank under Section 13(4) of the Act before the Debt Recovery Tribunal. The Debt Recovery Tribunal is required to decide whether the action

of the Bank/Financial institutions, under Section 13(4) is in accordance with the provisions of the Act and the rules framed thereunder. It is open to the borrower/guarantor/mortgagor to demonstrate before the Debt Recovery Tribunal that resort to Section 13 of the Act is not permissible by law. In a given case, the claim of the Bank/Financial Institutions may be barred by limitation or there may be cases, where the adjustment of the amount paid is not reflected in the notice or the calculation of interest may not be in accordance with the contract between the parties. Needless to say that all such grounds, which render the action of the Bank/Financial Institutions illegal can be raised in the proceedings under Section 17 of the Act before the Debt Recovery Tribunal.

Learned Additional Solicitor General and the learned counsel appearing for banks and financial institutions fairly stated that all the objections which can be legally raised in the reply to the notice under Section 13(2) of the Act can also be raised in the proceedings under Section 17(1) of the Act. It would be for the Debt Recovery Tribunal to decide in each case whether the action of the bank is in accordance with the provisions of the Act and is legally sustainable."

42. Further strong reliance was placed on ***SUNDARAM HOME FINANCE LTD., REP. BY ITS MANAGER-RECOVERY Vs. TEHSILDAR, HOSUR & ANOTHER***[7] wherein the Division Bench of the Madras High Court held at Paras 5, 9 and 12 that

"The challenge to the Act was set at rest by the Supreme Court in Mardia Chemicals v. Union of India,

2004(4) S.C.C. 311:2004(2) D.R.T.C. 107(S.C.) The following paragraphs of the above judgment are relevant:

> In the background we have indicated above, we may consider as to what forums or remedies are available to the borrower to ventilate his grievance. The purpose of serving a notice upon the borrower under sub-section (2) of Sec.13 of the Act is, that a reply may be submitted by the borrower explaining the reasons as to why measures may or may not be taken under sub-section (4) of Sec.13 in case of non-compliance with notice within 60 days. The creditor must apply its mind to the objections raised in reply to such notice and an internal mechanism must be particularly evolved to consider such objections raised in the reply to the notice. There may be some meaningful consideration of the objections raised rather than to ritually reject them and proceed to take drastic measures under sub-section (4) of Sec.13 of the Act. Once such a duty is envisaged on the part of the creditor it would only be conducive to the principles of fairness on the part of the banks and financial institutions in dealing with their borrowers to apprise them of the reason for not accepting the objections or points raised in reply to the notice served upon them before proceeding to take measures under sub-section (4) of Sec.13. Such reasons, over ruling the objections of the borrower, must also be communicated to the borrower by the secured creditor. It will only be in fulfillment of a requirement of reasonableness and fairness in the dealings of institutional financing which is so important from the point of view of the economy of the country and would serve the purpose in the growth of a healthy economy. It would certainly provide guidance to the secured debtors in general in conducting the affairs in a manner that they may not be found defaulting and being made liable for the unsavoury steps contained under sub-section (4) of

Sec.13. At the same time, more importantly, we must make it clear unequivocally that communication of the reasons for not accepting the objections taken by the secured borrower may not be taken to give occasion to resort to such proceedings which are not permissible under the provisions of the Act. But communication of reasons not to accept the objections of the borrower, would certainly be for the purpose of his knowledge which would be a step forward towards his right to know as to why his objections have not been accepted by the secured creditor who intends to resort to harsh steps of taking over the management/business of viz. secured assets without intervention of the Court. Such a person in respect of whom steps under Sec.13(4) of the Act are likely to be taken cannot be denied, the right to know the reason of non-acceptance and of his objections. It is true, as per the provisions under the Act, he may not be entitled to challenge the reasons communicated or the likely action of the secured creditor at that point of time unless his right to approach the D.R.T. as provided under Sec.17 of the Act matures on any measure having been taken under sub-section (4) of Sec.13 of the Act.

We are holding that it is necessary to communicate the reasons for not accepting the objections raised by the borrower in reply to the notice under Sec.13(2) of the Act, more particularly for the reason that normally in the event of non-compliance with notice, the party giving notice approaches the Court to seek redressal but in the present case, in view of Sec.13(1) of the Act the creditor is empowered to enforce the security himself without intervention of the Court. Therefore, it goes with logic and reason that he may be checked to communicate the reason for not accepting the objections, if raised and before he takes the measures like taking over possession of the secured

assets, etc.

This will also be in keeping with the concept of right to know and lender's liability of fairness to keep the borrower informed particularly of the developments immediately before taking measures under sub-section (4) of Sec.13 of the Act. It will also cater to the cause of transparency and not secrecy and shall be conducive in building an atmosphere of confidence and healthy commercial practice. Such a duty, in the circumstances of the case and the provisions, is inherent under Sec.13(2) of the Act.

However, to a very limited extent jurisdiction of the Civil Court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the Civil Court in the cases of English mortgages. We find such a scope having been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely V.Narasimhachariar, A.I.R. 1955 Mad. 135, a judgment of the learned single Judge where it is observed as follows in para 22:

The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are two fold in character. The mortgagor can come to the Court before sale with an injection for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgage must clearly disclose a fraud or irregularity on the basis of which relief is sought-Adams V. Scott, 1859(7) W.R. 213, 249. I need not point out that this restraint on the exercise of

the power of sale will be exercised by Courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annual one of the chief securities on which persons advancing moneys on mortgages rely. (See Ghose, Rashbehary – Law of Mortgages, Vol.II, 4th Edn., p.784)'.

In regard to the submissions made by the parties as indicated in the preceding paragraphs, we would like to make it clear that issue of a notice to the debtor by the creditor does not attract the application of the principles of natural justice. It is always open to tell the debtor what he owes to repay. No hearing can be demanded from the creditor at this stage. So far as the provision of appeal is concerned, we have already discussed in the earlier part of the judgment that proceedings under Sec.17 of the Act have been wrongly described as appeal before the D.R.T. It is in fact a forum where proceedings are originally initiated in case of any grievance against the creditor in respect of any measure taken under sub-section(4) of Sec.13 of the Act. Hence, the decisions on the point as to whether provision for an appeal is essential or not are not of any assistance in the facts of the present case."

The answer to the appellant's question is found in para 45 extracted above, which requires the creditor to apply its mind to the objections raised in the reply notice under Sec.13(2) of the Act. There must be some meaningful consideration of the objections and not a ritual rejection, to be followed up by the measures under sub-section(4) of Sec.13. If the Supreme Court had found on a reading of Sec.13(2) and Sec.13(4) that before proceeding under Sec.13(4) of the Act, a notice to be issued, the words

"rather than to ritually reject them and proceed to take drastic measures…" would not have been made. Therefore, it is clear that the intention of the creditor to proceed against the assets unless a satisfactory objection is received from the borrower, is expressed only once and that is by the notice under Sec.13(2) of the Act. In fact, it is seen from a reading of para 45 above, that banks and financial institutions should apprise the borrowers of their reason for not accepting the objections or points raised in reply to the notice before proceeding to take measures under sub-section (4). These reasons over-ruling the objections of the borrower must also be communicated to the borrower by the secured creditor. Section 13(2) calls upon the borrower to state his objections as to why measures shall not be taken under sub-section (4) of Sec.13. So, once those objections are overrules, the consequences follow. There does not appear to be an occasion for another notice informing the intent to proceed.

The words of the section and the law laid down in Mardia Chemical's case(supra) do not envisage a notice under Sec.13(4). Reasons for not accepting the objection are to be communicated before taking measures like taking over possession of the secured assets. This is the fairness that is required of the lender, but if the borrower has not responded to the notice under Sec.13(2), the lender has no occasion to communicate his reasons, necessarily the lender proceeds to the next stage. The borrower gets a right to challenge the action only after any of the measures contemplated under Sec.13(4) have been taken. It is clear from the paragraphs extracted above from Mardia Chemical's case that the communication of the reasons may not be taken to give an occasion to resort to such

proceedings which are impermissible under the Act. A person who does not respond to the notice under Sec.13(2) of the Act should be considered to be aware of the consequences that will follow. In any event, it is not possible to hold that a borrower who has not responded to the notice under Sec.13(2) will be entitled to a notice under Sec.13(4), whereas, in respect of a borrower who has responded to a notice under Sec.13(2) and has had the rejection communicated by the bank, the bank can proceed straightaway to take the measures contemplated under Sec.13(4). There is no room for visualizing two such courses of action. This will be reading words into the section, which the Legislature had not used. It is not our duty to legislate. The Supreme Court also was aware that "some of the provisions may be a bit harsh for some of the borrowers", yet has not, in its judgment, held that a pre-Sec.13(4) notice must be issued. We are unable to read a requirement of such notice either in the section or in the judgment.

In a different context, while dealing with the constitutional validity of the Terrorist and Disruptive Activities (TADA)Act, the Supreme Court observed that this kind of invocation of the provisions of TADA Act "in cases, the facts of which do not warrant, is nothing but sheer misuse and abuse of the Act by the police. Unless the public prosecutors rise to the occasion and discharged their onerous responsibility keeping in mind that they are prosecutors on behalf of the public, it cannot be said that the provisions of the TADA Act are enforced effectively in consonance with the legislative intent." Paraphrasing the same in the present context, we may say, therefore, "if invocations of the provisions of the Act in cases where it is

not warranted or where it is unjustified are recklessly resorted to, it would amount to flagrant abuse of the Act". Perhaps, it is this fear of possible abuse by the lenders that prevailed upon the learned single Judge to read into Sec.13(4), the requirement of a notice."

43. Further, reliance was placed on ***M/S. TRADE WELL, A PROPRIETORSHIP FIRM MUMBAI & ANOTHER v. INDIAN BANK & ANOTHER***[8] wherein it was observed that

"Sub-section (3) of S.14 is preceded by sub-section (2) under which for securing compliance of sub-section (1), that is for taking possession, the Chief Judicial/Metropolitan Magistrate or District Magistrate(CMM/DM) can take such steps and use or cause to be used, such force, as may in his opinion, be necessary. Sub-section (3) grants immunity to the CMM/DM as regards steps taken by him or force allowed to be used by him for providing assistance for taking possession. Since adjudication of rival claims is absent at that stage, there is no question of his dealing with rival claims and giving a reasoned judgment as regards the merits of the case and obviously there is no question of such a reasoning assuming finality. In any event, if a party has any grievance as regards contents of that order, his remedy would be voice them in the application u/S.17 before the DRT after measures u/S.13(4) are taken. Section 14 does not contemplate any notice to the borrower or a third party. It is only Section 17 which states that any person including borrower can make an application to DRT being aggrieved by any measure taken u/S.13(4). Explanation to Section 17 clarifies that reasons communicated to a borrower at the stage of

communication will not confer on the person including borrower any right to make an application to DRT u/S.17(1). Section 18 again confers right on any person aggrieved by an order of DRT u/S.17 to file an appeal before the Appellate Tribunal against the said order. Therefore, third party was in the mind of legislature when it enacted the Act. Whereever necessary reference is made to third party. Nothing prevented the legislature from specifically making a provision in Section 14 for notice to the borrower or third party. It purposely did not make provision for notice or hearing being given to the borrower or third party at the stage of Sections 14. Looking to the scheme of the Act, notice or hearing to the borrower or third party is excluded at the stage of Section 14 by necessary implication. However the bank or financial institution shall, before making an application u/S.14 of the Act, verify and confirm that notice u/S.13(2) of the Act is given and that the secured asset falls within the jurisdiction of CMM/DM before whom application u/S.14 is made. The bank and financial institution shall also consider before approaching CMM/DM for an order u/S.14 of the Act, whether Sec.31 of the Act excludes the application of Sections 13 and 14 thereof to the case on hand. CMM/DM acting u/S.14 of the Act is not required to give notice either to the borrower or to the 3rd party. He has to only verify from the bank or financial institution whether notice u/S.13(2) of the Act is given or not and whether the secured assets fall within his jurisdiction. There is no adjudication of any kind at that stage it is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order u/S.14 of the Act by recording that the above conditions are not fulfilled. If these two conditions are

> fulfilled, he cannot refuse to pass an order u/S.14. Remedy provided u/S.17 of the Act is available to the borrower as well as the third party. Remedy provided u/S.17 is an efficacious alternative remedy available to the third party as well as to the borrower where all grievances can be raised."

44. No doubt submissions at length were made that the views expressed by the Division Bench of the Madras High Court and also the Division Bench of the Bombay High Court referred supra had not dealt with this specific question directly the incidental or ancillary observations cannot be taken as ratio and even otherwise these decisions cannot be said to be binding precedents as far as this Court is concerned. The learned Judges of the respective Division benches of both Madras High Court and Bombay High Court had an occasion to deal with this question, may be slightly in a different context. The scope and object of the respective provisions and the operative field thereof also had been considered. It is no doubt true that as far as the Division Bench of this Court is concerned, while disposing the batch of writ appeals, those were against the interim orders and this question had not been dealt with in elaboration though certain of the decisions were brought to the notice of the learned Division Bench.

45. In the light of the facts and circumstances of the case, this Court is satisfied that there are no convincing or acceptable reasons placed before this Court to express a different opinion differing from the views of the learned Division Benches of both Bombay High Court and

Madras High Court as well referred to supra. It is needless to say that these writ petitions being devoid of merit they are liable to be dismissed and accordingly they are hereby dismissed. However, it is brought to the notice of this Court that substantial amounts already had been paid to the banking institution, and it is needless to say that it is for the banking institution to take an appropriate decision in relation to such debts. Except making this observation, nothing more can be done in all these batch matters.

46. Subject to the above observation, the writ petitions shall stand dismissed. No costs.

P.S.NARAYANA, J.

Dated: 05 -12-2007
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[1] (2004) 4 SCC 311
[2] AIR 2007 SC 712
[3] 2007(1) D.R.T.C.592(Mad.)

[4] 2007(1) Decisions Today (SC)419

[5] AIR 2007 SC 712

[6] AIR 2007 MADRAS 268

[7] [2007(1) D.R.T.C.592(Mad.)]

[8] AIR 2007(NOC) 1634 (BOM) = 2007(3) AIR Bom.R.656(DB)